

EXHIBIT 5

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MONTANA
3 GREAT FALLS DIVISION
4

5 CASE NO. 4:21-cv-00097-BMM

6
7 JACKSON WELLS, as Personal Representative for the
8 Estate of THOMAS E. WELLS, deceased; and JUDITH
9 HEMPHILL, as Personal Representative for the
10 Estate of JOYCE H. WALDER, deceased,

11 Plaintiffs,

12 vs.

13 BNSF RAILWAY COMPANY, a Delaware corporation;
14 ROBINSON INSULATION COMPANY, a Montana corporation
15 for profit; GROGAN ROBINSON LUMBER COMPANY, a
16 Montana corporation for profit; and DOES A - Z,

17 Defendants.
18

19 REMOTE VIDEO-RECORDED DEPOSITION

20 OF

21 JUDITH HEMPHILL

22 (Taken on Behalf of the Defendant,
23 BNSF Railway Company)

24 Taken at McGarvey Law
25 345 First Avenue, E.
Kalispell, Montana
Wednesday, July 6, 2022 - 9:34 a.m.

26 Reported by Jolene Asa, RPR,
27 Asa & Gilman Reporting, Inc., Notary Public
for the State of Montana/Flathead County

A P P E A R A N C E S

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ALSO PRESENT:

Mr. Tony Asa (Videographer)

1 S T I P U L A T I O N S

2

3 It was stipulated by and between counsel for the
4 respective parties that the deposition be taken by
5 Jolene Asa, Registered Professional Reporter and
6 Notary Public for the State of Montana, residing in
7 Flathead County, Montana.

8 It was further stipulated and agreed by and
9 between counsel for the respective parties that the
10 deposition be taken at the time and place set out on
11 the caption and pursuant to the Federal Rules
12 of Civil Procedure.

13 It was further stipulated and agreed by and
14 between counsel for the respective parties and the
15 witness that the reading and signing of the deposition
16 would be expressly reserved.

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09:06:17

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<p style="text-align: right;">5</p> <p>1 THE VIDEOGRAPHER: Okay. Good morning. We</p> <p>2 are now on the record at 9:34 a.m. on Wednesday,</p> <p>3 July 6th, 2022.</p> <p>4 Please note that the microphones are</p> <p>5 sensitive and may pick up whispering and private</p> <p>6 conversations. Please mute your phones at this time.</p> <p>7 Audio and video recording will continue to take place</p> <p>8 unless all parties agree to go off the record.</p> <p>9 This is Media Unit 1 of the Video-Recorded</p> <p>10 Deposition of Judith Hemphill taken by counsel for the</p> <p>11 defendant in the matter of Jackson Wells, as personal</p> <p>12 representative for the Estate of Thomas E. Wells,</p> <p>13 deceased, and Judith Hemphill, as personal</p> <p>14 representative for the Estate of Joyce H. Walder,</p> <p>15 deceased, versus BNSF Railroad Company, a Delaware</p> <p>16 corporation, Robinson Insulation Company, a Montana</p> <p>17 corporation for profit, Grogan Robinson Lumber</p> <p>18 Company, a Montana corporation for profit, and Does A</p> <p>19 through Z, filed in the U.S. District Court, District</p> <p>20 of Montana, Great Falls Division, Case</p> <p>21 No. 4:21-cv-00097-BMM.</p> <p>22 This deposition is being conducted remotely</p> <p>23 using virtual technology with the witness located at</p> <p>24 345 First Avenue East, Kalispell, Montana.</p> <p>25 My name is Tony Asa, representing Veritext,</p>	<p style="text-align: right;">7</p> <p>1 EXAMINATION</p> <p>2 BY MR. NICASTRO:</p> <p>3 Q. Good morning. Before we begin, though, I do</p> <p>4 want to put one thing on the record. We did take a</p> <p>5 deposition of your niece, and there was one exhibit</p> <p>6 from that deposition. It was a box that she brought</p> <p>7 to the deposition.</p> <p>8 MR. NICASTRO: We still don't have that</p> <p>9 produced yet. I would proceed with the deposition,</p> <p>10 but I just want to put on the record that I have an</p> <p>11 objection to proceeding since we don't have a</p> <p>12 complete -- we don't have the production of that box</p> <p>13 yet, and I want to reserve my right to answer any</p> <p>14 questions from any documents that are subsequently</p> <p>15 produced from that box. So I do want to put that</p> <p>16 objection on the record.</p> <p>17 MS. MARIMAN: And we'll go ahead and restate</p> <p>18 our objection on that issue on the record in that the</p> <p>19 daughter of Ms. Walder was not subpoenaed or there was</p> <p>20 no subpoena duces tecum involved with her deposition.</p> <p>21 At her aunt's, who is a personal representative,</p> <p>22 request, she identified some documents in their home</p> <p>23 that Judith requested be delivered to the attorneys'</p> <p>24 office for production if they're relevant at all.</p> <p>25 Attaching them as an exhibit to the</p>
<p style="text-align: right;">6</p> <p>1 and I'm the videographer. The court reporter is</p> <p>2 Jolene Asa, also representing Veritext.</p> <p>3 I'm not authorized to administer an oath. I</p> <p>4 am not related to any party in this action, nor am I</p> <p>5 financially interested in the outcome. If there are</p> <p>6 any objections to proceeding, please state them at the</p> <p>7 time of your appearance.</p> <p>8 Counsel and all present, including remotely,</p> <p>9 will now state their appearances and affiliations for</p> <p>10 the record beginning with the noticing attorney.</p> <p>11 MR. NICASTRO: Good morning. This is</p> <p>12 Anthony Nicastro on behalf of Knight Nicastro MacKay</p> <p>13 representing BNSF Railway Company in this lawsuit.</p> <p>14 MS. MARIMAN: This is Jinnifer Mariman</p> <p>15 representing the plaintiffs in this lawsuit.</p> <p>16 Sam, you're on mute.</p> <p>17 THE REPORTER: We can't hear you.</p> <p>18 MR. TAYLOR: I'm sorry. This is Sam Taylor</p> <p>19 with the Lanier Law Firm, attorney for the plaintiffs.</p> <p>20 THE VIDEOGRAPHER: Will the court reporter</p> <p>21 please swear in the witness, and then counsel may</p> <p>22 proceed.</p> <p>23 JUDITH HEMPHILL,</p> <p>24 being first duly sworn to tell the truth, the whole</p> <p>25 truth and nothing but the truth, testified as follows:</p>	<p style="text-align: right;">8</p> <p>1 deposition without affording counsel the opportunity</p> <p>2 to review for privilege or even if they're responsive</p> <p>3 in a discovery request is improper, and we based our</p> <p>4 objections stated on the record at that time.</p> <p>5 We received Mr. Nicastro's email as of last</p> <p>6 Friday afternoon requesting production before this</p> <p>7 deposition here Wednesday morning, and we have been</p> <p>8 reviewing those documents. We will be supplementing</p> <p>9 discovery.</p> <p>10 I will reflect on the record that a lot of</p> <p>11 these are just military training documents having no</p> <p>12 relevance to this case. That said, we're reviewing</p> <p>13 for privilege, and they will be produced in the course</p> <p>14 of discovery. So that will be occurring here</p> <p>15 hopefully in the next couple days.</p> <p>16 Go ahead.</p> <p>17 MR. NICASTRO: Okay. That's fine. My</p> <p>18 objection is noted then on the record. Thank you for</p> <p>19 the information.</p> <p>20 BY MR. NICASTRO:</p> <p>21 Q. Please state your name, introduce yourself</p> <p>22 for our record.</p> <p>23 A. Judith Hemphill, sister of --</p> <p>24 Q. And what -- I'm sorry. Go ahead.</p> <p>25 A. Sister of Joyce Hemphill Walder.</p>

1 Q. What is your current address?
 2 **A.** 308 Bennie Lane, Libby, Montana.
 3 Q. And what is your date of birth?
 4 **A.** 3/14/58.
 5 Q. Have you ever given a deposition before?
 6 **A.** No.
 7 Q. I'm just going to run through some of the
 8 basic rules that we have of a deposition to assist us
 9 all in this process.
 10 First, as you'll notice, there's a court
 11 reporter that is sitting next to you, and she's taking
 12 down every word that's being said so that we have a
 13 good record of what was said during the deposition,
 14 and so it's important that we not speak over each
 15 other.
 16 It happens, but if we start to do that,
 17 we'll just kind of pause and make sure that I'm giving
 18 you ample time to completely answer my question, and,
 19 also, if you can wait until I'm done giving the
 20 question before giving an answer, that will help us
 21 with the record.
 22 If you need to take a break at any time
 23 during this deposition, that's perfectly fine. We
 24 just ask that you answer a pending question, if we
 25 have a pending question at the time that you want to

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1 take a break. Typically, I go for about an hour and
 2 then see if anybody wants to take a break.
 3 If you don't understand a question that's
 4 being asked, please let us know. Otherwise, when we
 5 go back and we read the deposition transcript, we're
 6 going to assume that you understood the question at
 7 the time that it was being asked and you gave an
 8 answer.
 9 And the other rule -- even though I can see
 10 you and you're in the same room with the court
 11 reporter, we may understand what head nods might be,
 12 but, again, for our record, we'll need verbal
 13 responses. So if that's -- if I see a head nod or
 14 head shake and I remind you to give a verbal answer,
 15 it's for the purposes of our record.
 16 Do those rules make sense?
 17 **A.** Yes, they do.
 18 Q. Okay. What, if anything, did you do to
 19 prepare for your deposition today?
 20 **A.** I drove over from Libby to Kalispell.
 21 Q. Okay. And did you review any documents to
 22 prepare for the deposition?
 23 **A.** No.
 24 Q. Let me get some more personal information
 25 about you, for instance, your family history.

1 Are you currently married?
 2 **A.** No.
 3 Q. Have you ever been married?
 4 **A.** I have.
 5 Q. And how many times?
 6 **A.** Once.
 7 Q. What was your spouse's name?
 8 **A.** Worth Nixon.
 9 Q. Did you say "Worth"?
 10 **A.** Uh-huh.
 11 Q. Was that "Yes"?
 12 **A.** Yes.
 13 Q. Okay. And when were you married to Worth
 14 Nixon?
 15 **A.** 1981 to 2006.
 16 Q. Does Mr. Nixon -- is he still alive?
 17 **A.** He is.
 18 Q. And where does he currently live?
 19 **A.** I have no idea.
 20 Q. Do you have any children?
 21 **A.** No.
 22 Q. And are you currently working?
 23 **A.** Yes.
 24 Q. What do you do for a living?
 25 **A.** I work for the Montana -- State of Montana.

12

1 Q. What do you do for the State of Montana?
 2 **A.** I am a residential appraiser.
 3 Q. Tell me just kind of real briefly, what does
 4 a residential appraiser do for the State of Montana?
 5 **A.** We value the residential properties for --
 6 ultimately for taxation. We do not do the taxation.
 7 We do the valuing. The county does the taxation. We
 8 analyze the sales and the residential land and
 9 buildings.
 10 Q. How long have you been doing that?
 11 **A.** Since 2007.
 12 Q. And where do you physically work?
 13 **A.** 952 East Spruce Street, Libby, Montana.
 14 Q. And what were you doing before that job,
 15 ma'am?
 16 **A.** I was working for Luck-E-G Post and Rail.
 17 Q. And what were you doing for Luck-E-G?
 18 **A.** I was working in the front office.
 19 Q. And where are they located? Where were you
 20 physically working?
 21 **A.** They were located in the old mill yard.
 22 There wasn't a physical address at that point.
 23 Q. And when you say "Old mill yard," are you
 24 referring to a location in Libby or outside of Libby?
 25 **A.** In Libby.

13

1 Q. How long did you have that job?
 2 A. Two years.
 3 Q. And what were you doing before that?
 4 A. Going to college.
 5 Q. Which college were you attending?
 6 A. Flathead Valley Community College, the
 7 satellite at Libby.
 8 Q. And how long were you in that program?
 9 A. Two and a half years.
 10 Q. And what were you studying?
 11 A. Business administration.
 12 Q. I assume you were living in Libby at that
 13 time, while you were doing your schooling?
 14 A. I was.
 15 Q. And what did you do before you were in
 16 Flathead Community College?
 17 A. I worked for Stimson Lumber Company.
 18 Q. And how long did you work for Stimson Lumber
 19 Company?
 20 A. Until 2005, and I don't remember when they
 21 bought the lumber company. I don't remember the year.
 22 Q. When you say, "I don't remember when they
 23 bought the lumber company," what do you mean?
 24 A. When Stimson Lumber bought the lumber
 25 company, previous --

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1 Q. The previous --
 2 A. Pardon me?
 3 Q. Go ahead. Finish your answer. Sorry.
 4 A. I do not know the year when Stimson Lumber
 5 bought the previous lumber company.
 6 Q. When did you first start working for --
 7 strike that.
 8 What was the name of the previous lumber
 9 company?
 10 A. Champion International.
 11 Q. And when you first started working for the
 12 lumber company, was it known as Champion?
 13 A. It was not.
 14 Q. What was the previous name when you first
 15 started working for the lumber company?
 16 A. St. Regis Lumber Company.
 17 Q. So what year did you first start working for
 18 the lumber company?
 19 A. 1977.
 20 Q. Is it fair to say that you worked for a
 21 lumber company from 1977 until 2005?
 22 A. It is.
 23 Q. Okay. What did you do for the lumber
 24 company during the, what, 28 years?
 25 A. Started in the data entry and went into

15

1 accounts payable.
 2 Q. So during that entire time, were you working
 3 in the office?
 4 A. I was.
 5 Q. So let's see. If I'm doing my math, it
 6 looks like you started with the lumber company when
 7 you were about 19 years old?
 8 A. About that.
 9 Q. Okay. All right. Now, this is a lawsuit
 10 that you have filed on behalf of -- is it your sister?
 11 A. Yes.
 12 Q. Okay. So I'm going to kind of run through,
 13 make sure I've got the family history correct.
 14 Where are you -- how many siblings did you
 15 have?
 16 A. There were four of us.
 17 Q. Four. Okay. And names and sort of the ages
 18 from oldest to youngest, if you will.
 19 A. Oldest, Clark Hemphill, born approximately
 20 1951; Claude Hemphill, born 1952; Joyce Hemphill, born
 21 1954; and myself, 1958.
 22 Q. Okay. So you were the youngest of four?
 23 A. I was.
 24 Q. And so are any of your older brothers
 25 deceased?

16

1 A. One. One is.
 2 Q. Which one?
 3 A. Claude.
 4 Q. One. When did he die?
 5 A. 1998.
 6 Q. And if you know, what were the circumstances
 7 around his passing?
 8 A. Diabetes.
 9 Q. Where does Clark currently live?
 10 A. Alaska, Anchorage.
 11 Q. When did --
 12 A. I'm sorry. I'm sorry. Anchorage area,
 13 Eagle River.
 14 Q. When did he roughly move away from Libby,
 15 Montana?
 16 A. Approximately when he was -- I don't know --
 17 19. I do not know.
 18 Q. Sometime after high school?
 19 A. After high school.
 20 Q. Would he still come back to Libby from time
 21 to time?
 22 A. Periodically.
 23 Q. What was -- if you could give me just sort
 24 of a general sense of what his visitation schedule was
 25 like.

17

1 **A.** No, I really can't. I can't -- it was far
 2 enough in between I couldn't give you an estimate of
 3 years.
 4 **Q.** And when did Joyce move away from Libby?
 5 **A.** When she graduated.
 6 **Q.** And what year would she have graduated high
 7 school?
 8 **A.** 1972.
 9 **Q.** And what was her -- did she return back to
 10 Libby from time to time?
 11 **A.** She did.
 12 **Q.** What was her visitation schedule like when
 13 she would come back to Libby, if you know?
 14 **A.** She would -- she would come back definitely
 15 more often than Clark. When she first graduated,
 16 maybe once a year, once every couple years. After she
 17 had the kids, she came back every summer and spent
 18 the -- spent the whole summer here.
 19 **Q.** Can you give me the names of your parents?
 20 **A.** Burton Charles Hemphill, Ethel Hemphill
 21 Anderson.
 22 **Q.** And roughly -- if you know the ages, that's
 23 fine, but if they have passed away, how old were they
 24 when they passed away?
 25 **A.** Burton died when he was 60.

18

1 **Q.** And Bethel (sic) roughly?
 2 **A.** Ethel was 89.
 3 **Q.** And did they live in Libby their entire
 4 life, or did they come to Libby at some point during
 5 their lifetime?
 6 **A.** Burton came to Libby somewhere around 1950.
 7 **Q.** Okay.
 8 **A.** I believe Ethel spent her life here.
 9 **Q.** And what were the circumstances, if you
 10 know, of the passing of Burton, your father?
 11 **A.** Heart failure.
 12 **Q.** And how about Bethel (sic), your mother?
 13 **A.** Ethel? Old age.
 14 **Q.** Okay. And is it Bethel or Ethel?
 15 **A.** E-T-H-E-L.
 16 **Q.** Thank you. I apologize.
 17 Now, you and your three other siblings, did
 18 you all live and grow up together in Libby in the same
 19 household?
 20 **A.** We did.
 21 **Q.** All right. And what was the first -- where
 22 was the first home located that you recall living in?
 23 **A.** On what is now Hemphill Road. It did not
 24 have an address. It was a log house.
 25 **Q.** Now, Hemphill Road seems to -- is the same

19

1 as your family name. Does your family own property
 2 around, well, what's now known as Hemphill Road?
 3 **A.** Yes.
 4 **Q.** Okay. So how did -- did the road become
 5 known as Hemphill Road because of a family living
 6 there, your family?
 7 **A.** Yes.
 8 **Q.** Okay. What was it known as before it was
 9 called Hemphill Road?
 10 **A.** Up on Hemphill Hill. We were the only ones
 11 there.
 12 **Q.** I got you. Okay. Roughly how much land did
 13 your family own up on Hemphill Hill?
 14 **A.** Approximately 154 acres.
 15 **Q.** And has that changed over the years?
 16 **A.** It has.
 17 **Q.** Give me sort of a rough idea of how it's
 18 changed.
 19 **A.** We sold 20 acres to somebody.
 20 **Q.** Okay. And when would that have occurred?
 21 Do you recall who you sold it to?
 22 **A.** We sold it to Robert and Arvada Parsons. I
 23 don't know when.
 24 **Q.** All right. Any other significant changes in
 25 the land ownership over the years that you can recall?

20

1 **A.** It has been split up between the kids, but
 2 it's still Hemphill land.
 3 **Q.** And so the Hemphill land up there on
 4 Hemphill Hill around Hemphill Road, is it -- you said
 5 split up. Do you own it with your siblings?
 6 **A.** I own -- I own some of it. Joyce owns some
 7 of it.
 8 **Q.** Does Clark own any of it?
 9 **A.** No.
 10 **Q.** Now, when you say Joyce owns some of it now,
 11 obviously, Joyce has passed away. Does her husband
 12 own it, or is it in a trust, or does any family member
 13 own it? Can you give me a sense of how she still owns
 14 it?
 15 **A.** It's in the process of being probated.
 16 **Q.** Okay. Is there a particular address that
 17 she owns that's going through probate?
 18 **A.** No.
 19 **Q.** Okay. So going back, you were describing
 20 the house that you all were growing up in. It was
 21 a log cabin-type house. Do you know who built it?
 22 **A.** No.
 23 **Q.** And how long do you recall living in
 24 that home?
 25 **A.** I have no memories of it. Apparently, it

<p style="text-align: right;">21</p> <p>1 was old. My father started rebuilding in a --</p> <p>2 above -- slightly above where the cabin was and carved</p> <p>3 that out of the wilderness and actually built a garage</p> <p>4 that was going to be a garage until a house was built,</p> <p>5 and that never happened.</p> <p>6 Q. And roughly how old were you when you recall</p> <p>7 the building project that your father was working on?</p> <p>8 A. I do not recall it.</p> <p>9 Q. Okay.</p> <p>10 A. I recall living in the garage, slash, house,</p> <p>11 but I do not know -- I was too young when he built it.</p> <p>12 Q. All right. I'm going to try to show you a</p> <p>13 document. I'll mark it as an exhibit. I'll do a</p> <p>14 screen share here, and we'll see if this might help us</p> <p>15 run through some of these locations as well. So I'll</p> <p>16 mark it as Exhibit 1, and they are answers to BNSF's</p> <p>17 first interrogatories.</p> <p>18 MR. NICASTRO: Oh, I'm sorry. I need to</p> <p>19 share.</p> <p>20 (Discussion off the record.)</p> <p>21 (Exhibit 1 was marked.)</p> <p>22 BY MR. NICASTRO:</p> <p>23 Q. Can you see a document on my screen that's</p> <p>24 got the -- your attorneys' names up here?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">23</p> <p>1 Q. Okay. So there is a house at this</p> <p>2 address --</p> <p>3 A. Correct.</p> <p>4 Q. -- today?</p> <p>5 A. There is.</p> <p>6 Q. Okay. And when was that house built?</p> <p>7 A. Mid-1970s.</p> <p>8 Q. Okay. So here it has the dates of '54</p> <p>9 through '66, and then it breaks it up here, '66 to</p> <p>10 '70.</p> <p>11 Would your sister have lived up on Hemphill</p> <p>12 Road, just not at this address?</p> <p>13 A. She lives at that location. That address</p> <p>14 was not assigned then. There was no address assigned.</p> <p>15 Q. Okay. And so did your sister ever live at</p> <p>16 the house that is at 1124 Hemphill Road today?</p> <p>17 A. No.</p> <p>18 Q. She lived in a different home that was</p> <p>19 removed? Am I remembering correctly?</p> <p>20 A. Yes. She lived in the garage, slash, house</p> <p>21 that was -- that we lived in until approximately 1966</p> <p>22 and then to 1970.</p> <p>23 Q. Okay. Do you know why this is broken up</p> <p>24 here, '66?</p> <p>25 A. I do.</p>
<p style="text-align: right;">22</p> <p>1 Q. All right. So it's marked as Exhibit 1, and</p> <p>2 these are answers to interrogatories, which are legal</p> <p>3 questions. Do you recall providing information early</p> <p>4 on in this lawsuit, answering some questions or</p> <p>5 reviewing some answers to questions?</p> <p>6 A. Questions by whom?</p> <p>7 Q. By us. So we would have sent over these</p> <p>8 interrogatories, and you would have provided some</p> <p>9 answers to these questions. For instance, it lists</p> <p>10 all the addresses where Ms. Walder lived during her</p> <p>11 lifetime.</p> <p>12 A. I don't remember answering questions to you.</p> <p>13 Q. Okay. All right. Let me run through this</p> <p>14 document here.</p> <p>15 Our first interrogatory asks for addresses</p> <p>16 where Ms. Walder lived during her lifetime and the</p> <p>17 number of years that she lived there, so I wanted</p> <p>18 to -- this is the answer that was provided, and the</p> <p>19 first one has an address here of 1124 Hemphill Road.</p> <p>20 Is that the address -- would that have been</p> <p>21 the address of the cabin where you all grew up?</p> <p>22 A. That did not have an address, and the</p> <p>23 1124 Hemphill Road is the current address where the</p> <p>24 garage, slash, house was located, and a house has been</p> <p>25 built there since then.</p>	<p style="text-align: right;">24</p> <p>1 Q. Okay.</p> <p>2 A. In 1966 my father passed away, and at some</p> <p>3 of those times, we lived down the hill in the winter</p> <p>4 and lived up there in the summer.</p> <p>5 Q. Okay. And what was -- why was that?</p> <p>6 A. Because there was a mile and a half of road,</p> <p>7 and a widowed woman with four children could not keep</p> <p>8 that road open.</p> <p>9 Q. That makes sense. And when you lived down,</p> <p>10 was that -- down off the hill, was that the Pioneer</p> <p>11 Road?</p> <p>12 A. Yes. And the 115 Pioneer Road in the winter</p> <p>13 of 1963 is when my dad sawed his foot and was on</p> <p>14 crutches and had no way to keep the road open.</p> <p>15 Q. Does -- did you all own these homes on</p> <p>16 Pioneer Road?</p> <p>17 A. No.</p> <p>18 Q. Who did own the homes on Pioneer Road, if</p> <p>19 you know?</p> <p>20 A. I can give you last names.</p> <p>21 Q. That's fine.</p> <p>22 A. 115 was Watt. 97 would have been Hanson.</p> <p>23 Q. And when you were living at these</p> <p>24 residences, were you all living with that family, or</p> <p>25 were you renting from the family?</p>

<p style="text-align: right;">25</p> <p>1 A. We were renting.</p> <p>2 Q. Do you know if these -- the homes that you</p> <p>3 lived at at these addresses, do you know if they're</p> <p>4 still there today?</p> <p>5 A. I believe they are not.</p> <p>6 Q. Okay. Do you know when they were removed?</p> <p>7 A. No.</p> <p>8 Q. Do you know why they were removed?</p> <p>9 A. No.</p> <p>10 Q. Do you recall living at this residence of</p> <p>11 1116 West Second Street Extension, Libby, Montana?</p> <p>12 A. I do.</p> <p>13 Q. And did you live there with your siblings?</p> <p>14 A. I did.</p> <p>15 Q. And why is it, if you recall, that you lived</p> <p>16 here during '68 and '69 as opposed to up on Hemphill</p> <p>17 Road?</p> <p>18 A. It became -- I don't know. I can only</p> <p>19 speculate, and I'm not going to speculate. I was in</p> <p>20 fourth grade.</p> <p>21 Q. All right. How many years apart were you</p> <p>22 from your sister, Joyce, in school?</p> <p>23 A. Four years.</p> <p>24 Q. And, now, this has '68 through '69. Was it</p> <p>25 those entire two years or was it just a portion of</p>	<p style="text-align: right;">27</p> <p>1 Q. Is there a physical structure still at this</p> <p>2 address of 127 Hemphill Road?</p> <p>3 A. There is a mobile home. It is a different</p> <p>4 structure than what was there.</p> <p>5 Q. What was there before the mobile home?</p> <p>6 A. A mobile -- a small mobile home and an</p> <p>7 addition.</p> <p>8 Q. And where is 127 Hemphill Road in relation</p> <p>9 to 1124 Hemphill Road?</p> <p>10 A. Almost at the bottom.</p> <p>11 Q. And did you live there with your sister from</p> <p>12 1969 to 1970?</p> <p>13 A. Yes.</p> <p>14 Q. Why did you move from 127 Hemphill Road</p> <p>15 to -- strike that.</p> <p>16 Next here it says that your sister lived at</p> <p>17 122 -- excuse me. 1210 Nevada Avenue. Did you live</p> <p>18 there with your sister as well?</p> <p>19 A. Yes.</p> <p>20 Q. Why did you make that move to Nevada Avenue?</p> <p>21 A. My mother remarried.</p> <p>22 Q. And did you live there with your siblings</p> <p>23 and your stepfather?</p> <p>24 A. Yes.</p> <p>25 Q. And why, then, did you move from Nevada</p>
<p style="text-align: right;">26</p> <p>1 those years that you lived at Second Street?</p> <p>2 A. I don't know.</p> <p>3 Q. Do you know if that home, the residential</p> <p>4 structure that you were living in -- do you know if</p> <p>5 it's still there today?</p> <p>6 A. I don't. It was a mobile home.</p> <p>7 Q. Okay. Do you recall anything in particular</p> <p>8 about that mobile home?</p> <p>9 A. Such as?</p> <p>10 Q. Do you remember how big it was? Did you</p> <p>11 share bedrooms with your brothers and sisters? Were</p> <p>12 there other mobile homes there?</p> <p>13 A. There were other mobile homes there.</p> <p>14 Q. Okay. And did you share -- did you share a</p> <p>15 room with your siblings in that home?</p> <p>16 A. I don't remember.</p> <p>17 Q. And did you live there with your parents?</p> <p>18 A. I lived there with my mother and my three</p> <p>19 siblings.</p> <p>20 Q. By that time your father had passed?</p> <p>21 A. That is correct.</p> <p>22 Q. And then the next address we have is</p> <p>23 127 Hemphill Road. Why did you all leave Second</p> <p>24 Street Extension to then live up at Hemphill Road?</p> <p>25 A. I don't know.</p>	<p style="text-align: right;">28</p> <p>1 Avenue to another address at Pioneer Road, if you</p> <p>2 know?</p> <p>3 A. My mother and her husband bought a mobile</p> <p>4 home and put it in a mobile home park.</p> <p>5 Q. All right. And then here is 1972. That</p> <p>6 would have been the year that Joyce, your sister,</p> <p>7 graduated from high school?</p> <p>8 A. Yes.</p> <p>9 Q. And there's a break here where she then</p> <p>10 moved to Boise, Idaho. Did you move with your sister,</p> <p>11 or did you stay in Libby?</p> <p>12 A. I stayed in Libby.</p> <p>13 Q. Have you ever lived anywhere other than</p> <p>14 Libby, Montana?</p> <p>15 A. No.</p> <p>16 Q. In this document it indicates that from 1976</p> <p>17 to 1978 -- and then it kind of shows up sort of twice</p> <p>18 here as well -- Joyce was living back in Libby,</p> <p>19 Montana.</p> <p>20 First of all, do you have knowledge of that?</p> <p>21 A. I do.</p> <p>22 Q. And were you living with her at this time?</p> <p>23 A. Yes.</p> <p>24 Q. All right. So is this correct in that --</p> <p>25 well, explain why there's sort of a break up between</p>

29

1 these years. Where were the two of you living, and
 2 why the moving around?
 3 **A.** After I graduated in '76, then we roomed
 4 together, if you will, in those places, and so the
 5 1976 to 1978 -- she came back for a couple years, and
 6 so the 1976 to 1978 under 162 Pioneer Road is more
 7 accurate showing in the Highway 2 South and Avenue B
 8 and a short time on Pioneer Road.
 9 **Q.** How long during 1977 did the two of you live
 10 at U.S. Highway 2 South?
 11 **A.** Approximately a year.
 12 **Q.** Okay. So it might have been the full year?
 13 **A.** I don't remember.
 14 **Q.** Okay. That's fine. And then Avenue B in
 15 1978, how many months during that year did you live
 16 there?
 17 **A.** I don't remember how long I lived there. I
 18 lived there longer than she did, but she lived there
 19 shortly and then went -- and then left Libby again and
 20 went to Hawaii.
 21 **Q.** Okay. This -- the home that you lived in on
 22 U.S. Highway 2 South, do you know if that structure is
 23 still there?
 24 **A.** No.
 25 **Q.** That's kind of a poor question on my part.

30

1 You don't know the status of that?
 2 **A.** No, I do not. I do not know the status of
 3 it.
 4 **Q.** Okay. All right. How about the home on
 5 Avenue B? Do you know if that one is still there?
 6 **A.** It is not. It was a mobile home.
 7 **Q.** All right. And so after this time in 1978,
 8 did you and your sister, Joyce, ever live together
 9 again?
 10 **A.** No.
 11 **Q.** Where did you live, then, after Avenue B? I
 12 think you said you stayed there a little longer than
 13 she did.
 14 **A.** Yes. I was back up on Hemphill Hill
 15 until -- I don't know when we left Avenue B. I was on
 16 Hemphill Hill for approximately a year, I believe.
 17 **Q.** Okay. And then where did you live after
 18 that?
 19 **A.** What is now 12 Lewis Loop on Pioneer Road --
 20 or on Vanderwood Road in a mobile home.
 21 **Q.** You said 12 Lewis Loop?
 22 **A.** Yes.
 23 **Q.** How long did you live there?
 24 **A.** I don't know. Several years, and when I say
 25 "Several," I can estimate three to five.

31

1 **Q.** And where did you live after that?
 2 **A.** Rented a place on Pioneer Road again. Do
 3 not know the address.
 4 **Q.** That's fine. And how long did you live
 5 there?
 6 **A.** I can only guess. A couple of years.
 7 **Q.** And then where did you live after that?
 8 **A.** 611 Wisconsin Avenue.
 9 **Q.** And how long did you live there, if you
 10 recall?
 11 **A.** I don't recall, but I could speculate.
 12 Approximately three years.
 13 **Q.** Then where did you live after that?
 14 **A.** What is now 308 Bennie Lane.
 15 **Q.** So roughly what -- do you know what year you
 16 first started living at 308 Bennie Lane or maybe how
 17 old you were?
 18 **A.** I can only estimate at approximately 1985.
 19 **Q.** Okay. I'm going to show a map that was
 20 provided to us by your attorneys. I'll mark this as
 21 Exhibit 2.
 22 (Exhibit 2 was marked.)
 23 BY MR. NICASTRO:
 24 **Q.** Can you see this map okay?
 25 **A.** Yes.

32

1 **Q.** All right. Here it has -- it's got --
 2 somebody created a legend of the different addresses
 3 here, and so I want to run through these as well.
 4 The first one was the one address we were
 5 talking about of 1124 Hemphill Road. You'll see this
 6 mark up here of A. Does that appear to be where
 7 that -- where you and your sister grew up?
 8 **A.** Can you bring it down a little bit more, or
 9 is that -- I'm sorry. Up a little bit more. Is that
 10 it?
 11 **Q.** That --
 12 **A.** Okay. That's -- as near as I can tell,
 13 that's approximately 1124 Hemphill Road.
 14 **Q.** Okay. And then I'll show you another map in
 15 a little bit, but then B is Pioneer Road. B and C
 16 have Pioneer Road. Is this the general location of
 17 where the two -- where you would live -- where you
 18 lived after being up on the hill or the general area
 19 where you would live during the winter months when you
 20 couldn't get up on the hill?
 21 **A.** Yes.
 22 **Q.** And then here "I," this is Bennie Lane.
 23 This is currently where you live now; correct?
 24 **A.** Yes.
 25 **Q.** Did your sister, Joyce, ever live at Bennie

<p style="text-align: right;">33</p> <p>1 Lane?</p> <p>2 A. No.</p> <p>3 Q. Okay. And then H here is Vanderwood Road.</p> <p>4 Did your sister ever live at this address?</p> <p>5 A. Which address is that?</p> <p>6 Q. 454 Vanderwood Road.</p> <p>7 A. No.</p> <p>8 Q. E is 127 Hemphill Road. Did your sister --</p> <p>9 did you ever live with your sister at that address?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And then D, this was the Second</p> <p>12 Street Extension. Is that where you lived with your</p> <p>13 sister?</p> <p>14 A. Yes.</p> <p>15 Q. And then F is Nevada Avenue, 1210. Did your</p> <p>16 sister ever live at Nevada Avenue?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So this area here between A and "I,"</p> <p>19 is this Hemphill Road that my marker is on, if you can</p> <p>20 see it?</p> <p>21 A. Yes.</p> <p>22 Q. All right. So in this general area, is this</p> <p>23 where your family had owned the 154 acres?</p> <p>24 A. General area, yes.</p> <p>25 Q. Okay. And can you sort of explain -- I</p>	<p style="text-align: right;">35</p> <p>1 logging companies?</p> <p>2 A. I don't know.</p> <p>3 Q. Okay. And were the logging companies</p> <p>4 actively logging in -- on your family property?</p> <p>5 A. No.</p> <p>6 Q. Were they logging near your family property?</p> <p>7 A. Now, when you say "Logging company," do you</p> <p>8 mean the timber company, or do you mean an actual</p> <p>9 logger? I'm not sure what you're asking.</p> <p>10 Q. Well, we have these logging roads here, and</p> <p>11 they're easements. So I'm just sort of asking, was</p> <p>12 there somebody that was actively performing</p> <p>13 work removing trees on your property or property near</p> <p>14 your property?</p> <p>15 A. A lot of those skid roads were put in years</p> <p>16 and years and years ago. Some of them are not on our</p> <p>17 land, and the logging company only used the main road.</p> <p>18 The timber company, I should say, only used the main</p> <p>19 road. They did not use those skid roads.</p> <p>20 Q. Okay. And how often -- when you were</p> <p>21 growing up, how often would they use those -- the main</p> <p>22 road?</p> <p>23 A. To do what?</p> <p>24 Q. Well, just in general. Were they driving by</p> <p>25 on your main road -- was it on a daily basis? Was it</p>
<p style="text-align: right;">34</p> <p>1 don't know the date in which this picture was taken</p> <p>2 here. First of all, just seeing this picture -- I</p> <p>3 don't know if you're the one that identified it or</p> <p>4 made it or created it or whatever it might be, but can</p> <p>5 you tell generally the date of when this picture would</p> <p>6 have been -- aerial shot would have been taken?</p> <p>7 A. No.</p> <p>8 Q. All right. Now, there's some clearings in</p> <p>9 here that -- at least to me they look like clearings.</p> <p>10 Do you know what those are and what structures were at</p> <p>11 those locations?</p> <p>12 A. "A" is a field, a horse field.</p> <p>13 Q. Okay.</p> <p>14 A. And "I" or whatever that is is some horse</p> <p>15 fields and general clearing.</p> <p>16 Q. General clearing. Okay. What are these</p> <p>17 different lines that you see in this picture between A</p> <p>18 and "I"?</p> <p>19 A. Logging roads, skid roads.</p> <p>20 Q. Did you all ever -- did you or your family</p> <p>21 ever give any easements or rights to logging companies</p> <p>22 to go through the property, your property?</p> <p>23 A. Yes.</p> <p>24 Q. Would they be some of these logging roads</p> <p>25 right here, or is this property that's owned by the</p>	<p style="text-align: right;">36</p> <p>1 once a week, once a month? What do you generally</p> <p>2 recall?</p> <p>3 A. Probably if I were to guess -- and I am</p> <p>4 guessing -- every five to ten years.</p> <p>5 Q. And do you know what they were using your</p> <p>6 road for?</p> <p>7 A. No.</p> <p>8 Q. And where -- which roads -- road or roads</p> <p>9 did your family give them access to? Was it the main</p> <p>10 road?</p> <p>11 A. It was the main road.</p> <p>12 Q. That's now called Hemphill Road?</p> <p>13 A. Yes.</p> <p>14 Q. And at any point in time when you became an</p> <p>15 adult, were you ever involved in giving any logging</p> <p>16 company or timber company an easement to the Hemphill</p> <p>17 Road?</p> <p>18 A. No.</p> <p>19 Q. Obviously, at some point you became, you</p> <p>20 know, an adult, and now you've got some control over</p> <p>21 this property. Were you ever involved in any of</p> <p>22 the -- any conversations or negotiations with any</p> <p>23 company regarding the usage of Hemphill Road?</p> <p>24 A. I'm not sure what you're asking.</p> <p>25 Q. Well, I'm just -- I was kind of asking --</p>

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1 I'm just trying to see, you know, if your family gave
2 them the right to use Hemphill Road at some point, who
3 was the person who was in charge, if anybody, of
4 talking with the logging companies about their usage
5 of that road, whether it be compensation, how often
6 they're using it, what they're using it for. Were you
7 ever involved in that?

8 **A.** No.

9 **Q.** Who would have been?

10 **A.** They had easement at that point, and they
11 came, like I said, periodically, very periodically and
12 didn't cause any problems.

13 **Q.** I want to -- let me see if I can -- I want
14 to show you another picture here -- and this will just
15 be from Google Earth -- so I can get kind of a good
16 understanding of your property and what you owned and
17 where they had structures. Let me see if you can see
18 this here.

19 Can you see this screen here? It's a
20 different map.

21 **A.** Yes.

22 **Q.** All right. So I had gone into Google Earth
23 and just sort of typed in this physical address here,
24 and this pin popped up at 1124 Hemphill Road. Does
25 that -- is that the location where you would currently

38

1 have a house that was built in, I think you said, '76?

2 **A.** Yes.

3 **Q.** Does that look like the structure of the
4 house that was built in '76?

5 **A.** Yes.

6 **Q.** Okay. And so the way that I have the map
7 sort of zoomed in here -- and we see sort of different
8 fields -- where would the garage/log cabin have been
9 that you -- the structure that you grew up with --
10 grew up in with your sister? Would it have been on
11 this map?

12 **A.** It would have been above that house, the
13 green roof that you see, slightly above it, right
14 about approximately there, maybe. Actually, a little
15 more left. A little more down. A little more right.
16 Approximately there.

17 **Q.** Okay. So inside where we see kind of this
18 turnaround that's been grooved into the land?

19 **A.** Yes.

20 **Q.** Okay. Who lives at this address right now?

21 **A.** A renter. His name is -- do you need his
22 name?

23 **Q.** Sure.

24 **A.** Well, it's irrelevant. He's a renter.

25 **Q.** Okay. That's fine. I don't need his name.

39

1 How long has he been living in there?

2 **A.** Approximately four years.

3 **Q.** When did you -- your family no longer live
4 at this address, at this location?

5 **A.** Family as in the whole family or the last of
6 the family? I'm not sure what you're asking.

7 **Q.** The last of the family. It was built in
8 '76. You all have a renter in it now. When did it
9 become a rental?

10 **A.** 2007.

11 **Q.** Who was the individual that was living at
12 this location up until 2007?

13 **A.** Ethel.

14 **Q.** Okay. And so this road, as I've kind of
15 zoomed out, you mentioned that this -- maybe it's kind
16 of hard to tell on this map, but this is a -- this is
17 an elevation increase? You said this is up on a hill?

18 **A.** It is up on a hill from the valley.

19 **Q.** Okay.

20 **A.** As --

21 **Q.** Go ahead.

22 **A.** As you can see by the switchbacks in the
23 road.

24 **Q.** Yeah. Okay. Do you have any idea the
25 elevation change between up here at this residence and

40

1 down at Vanderwood Road?

2 **A.** No.

3 **Q.** And so now I've kind of zoomed out a little
4 more on Hemphill Road, but is this the area where your
5 family owns 154 acres, right where I'm pointing?

6 **A.** Approximately it is.

7 **Q.** In this general area right here, besides the
8 two -- the structure that we talked about that you
9 grew up in that's no longer there and the structure
10 that's there now, are there any other live-in
11 structures on this part of your family property?

12 **A.** No.

13 **Q.** Okay. And then Hemphill Road, it looks like
14 it continues, and then it looks like it connects back
15 up to Highway 2 on the other side of this hill. Is
16 that correct?

17 **A.** A road does, if they want to call it
18 Hemphill Road. They can name it whatever they want.

19 **Q.** Understood. Do you know what this clearing
20 is here in this -- that is showing up on the screen?

21 **A.** It belongs to Noble Excavation.

22 **Q.** Noble Excavation. Okay. Obviously, we'll
23 be talking a little bit about the lawsuit that's been
24 filed in this case, and I'm asking some questions
25 about remediation from vermiculite, but do you know?

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1 Was Noble Excavation a company that was involved at
2 all in any sort of excavation or remediation that
3 might have occurred because of W.R. Grace activities?

4 **A.** Say that again.

5 **Q.** Sure. Do you know if Noble Excavation --
6 obviously, it's a clearing here. It looks like dirt
7 being moved around. Do you know whether or not they
8 were ever involved in any excavation activities that
9 would be related to asbestos, the EPA, vermiculite,
10 things we're going to be talking about in this case?

11 **A.** I do not.

12 **Q.** Okay.

13 **MR. NICASTRO:** Okay. Let's take a five-
14 minute break.

15 **THE VIDEOGRAPHER:** Okay. We're now off the
16 record. The time is 10:35 a.m.

17 (Break held from 10:35 a.m. to 10:49 a.m.)

18 **THE VIDEOGRAPHER:** All right. We're now on
19 the record. The time is 10:49 a.m.

20 **BY MR. NICASTRO:**

21 **Q.** Okay. The home that was built in '76 up on
22 the hill at 1124 Hemphill Road, you said your mother
23 had lived there up until about 2007; is that correct?

24 **A.** Correct.

25 **Q.** Did anybody live with your mother at that

42

1 address?

2 **A.** Her husband.

3 **Q.** Okay. When Judith would come back to Libby
4 and visit after moving away, would she have stayed at
5 that residence, or would she have stayed somewhere
6 else?

7 **A.** Judith stayed at her own residence on Bennie
8 Lane. That would be me.

9 **Q.** Okay.

10 **A.** You said "Judith."

11 **Q.** Yeah. Sorry. Joyce. I got confused with
12 the Js. Let me ask that question again.

13 When your sister, Joyce, would come back to
14 Libby to visit, would she stay with your mother at all
15 at that home that was built in 1976 at 1124 Hemphill
16 Road?

17 **A.** Yes.

18 **Q.** Was that -- would she typically stay there
19 when she was visiting, or would she stay somewhere
20 else, or was it a mix, 50/50?

21 **A.** She typically stayed there.

22 **Q.** Okay. And you personally never lived at
23 that residence; is that correct?

24 **A.** I did live at that residence.

25 **Q.** Oh, you did live at that home?

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1 **A.** Uh-huh.

2 **Q.** Okay. All right. And I know you said you
3 didn't have any memory of the structure that was there
4 before, which you all lived there as children, so I'm
5 not going to ask you questions about that, but this --
6 the home that was built there in '76, do you know
7 whether or not that home was insulated at all?

8 **A.** It was insulated with fiberglass insulation,
9 the batting. I don't know whether it was fiberglass.
10 I know it was batting.

11 **Q.** Matting?

12 **A.** Batting.

13 **Q.** Batting. And how is it that you know that?

14 **A.** I was watching it be stapled up.

15 **Q.** Okay. Do you happen to know whether or not
16 that particular product contained asbestos or not?

17 **A.** I do not.

18 **Q.** Were there any homes that you lived in with
19 your sister, Joyce, that contained -- excuse me. That
20 contained insulation that you know of?

21 **A.** I don't know.

22 **Q.** Are you familiar with a product named
23 "Zonolite"?

24 **A.** I am.

25 **Q.** How are you familiar with that?

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1 **A.** I lived in Libby, Montana.

2 **Q.** When did you first hear that term,
3 "Zonolite"?

4 **A.** I have no idea.

5 **Q.** How about the term "Vermiculite"?

6 **A.** That would have been -- I would have heard
7 that term later in my years. Everybody knew about the
8 Zonolite mine.

9 **Q.** So earlier on was it referred to as Zonolite
10 and then at some point in time the term "Vermiculite"
11 was being used, or is that incorrect? Let me know
12 sort of that history in your mind where you sort of
13 heard the interchange between those two terms.

14 **A.** I would say that is correct. It was always
15 known as Zonolite, and then somewhere along the line
16 we learned it was vermiculite.

17 **Q.** Have you ever seen Zonolite?

18 **A.** I have.

19 **Q.** What does it look like?

20 **A.** It's dark, kind of sparkly, a little bit
21 ragged, small as in, you know -- well, not big.

22 **Q.** Do you happen to know the first time you
23 would have seen the product "Zonolite"?

24 **A.** I do not.

25 **Q.** Can you give a general idea as to -- not

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1 just age, but, I mean, were you a child? Were you in
2 high school? Was it as an adult? Can you please give
3 a rough estimate of that?

4 **A.** I was a child. The kids brought it home
5 from the ball field, and they would just bring home a
6 few pieces of it, and we would light it and watch
7 it -- they would light it and watch it expand. I was
8 very young. I stood back.

9 **Q.** When you say the kids would bring it back,
10 are you referring to friends, or are you talking about
11 some of your siblings?

12 **A.** My siblings.

13 **Q.** Okay. Would that include your sister,
14 Joyce?

15 **A.** That would.

16 **Q.** Had you ever seen her light the Zonolite and
17 expand it?

18 **A.** I have very little memory of watching
19 anybody light it. I remember watching it expand.

20 **Q.** Okay. And what were they doing to it to
21 make it expand?

22 **A.** Lighting it with a match.

23 **Q.** And do you have memory of at least your
24 sister doing that once?

25 **A.** I just remember the kids, we all -- they

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1 were crouching around the Zonolite lighting it, and I
2 was standing back because they told me to.

3 **Q.** Okay.

4 **A.** That's a very vague impression.

5 **Q.** Understood. Was that something that
6 would -- you know, would -- how often do you recall
7 seeing your siblings lighting the Zonolite or
8 expanding the Zonolite?

9 **A.** I would have no idea. I only have vague
10 memories of watching it expand.

11 **Q.** You mentioned they were bringing it home
12 from the ball fields. Is that because you have a
13 memory of them telling you that, or do you recall
14 seeing your siblings bringing the Zonolite home from
15 the ball field?

16 **A.** I don't know. I -- it's more of a memory of
17 them telling me where they got it.

18 **Q.** Where do you recall having memories of
19 seeing this Zonolite?

20 **A.** I have no memories of it.

21 **Q.** Okay.

22 **A.** Recall, I was four years younger than the
23 youngest sibling of the three.

24 **Q.** Yeah. You were four years younger than
25 Joyce.

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1 But with respect to, let's say -- we were
2 talking about the ball field. Do you ever remember
3 seeing Zonolite at the ball field?

4 **A.** Yes. Beside the ball field. I remember
5 seeing it, and in my later years I remember seeing it
6 stacked there.

7 **Q.** Okay. When you say "Seeing it stacked
8 there," what's -- were they --

9 **A.** It was in open -- just open bays.

10 **Q.** Do you know why it was sitting there by the
11 ball field?

12 **A.** I -- as far as I understand, it was to be
13 shipped.

14 **Q.** Okay. And you say, As far as I was to
15 understand that. Is it because someone told you that
16 or because you actually saw people moving the product
17 into trucks or something that was shipping it?

18 **A.** I did not see it being moved into trucks.

19 **Q.** Did you ever see it being moved, put into
20 railcars?

21 **A.** I never saw it being moved into railcars. I
22 believe -- and I would have to search way, way, way
23 back -- I would have seen railcars going down the
24 railroad with it.

25 **Q.** Okay. But as far as how it ended up on the

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1 ball field, do you know how it ended up there? Next
2 to the ball field. Excuse me.

3 **A.** I never saw it trucked in, no.

4 **Q.** Do you know whether or not it was used at
5 all at the ball field for any purpose?

6 **A.** I do not know.

7 **Q.** Do you know whether or not your sister,
8 Joyce, ever played in the Zonolite that you saw at the
9 ball field?

10 **A.** She told me that she used to take me over
11 while the boys were playing, it would have been, Babe
12 Ruth, Little League. I don't know. One of the
13 baseballs. They were very young, so I was younger.
14 And she told me that we used to go over and play in
15 those piles when she got bored with watching the boys,
16 and I do have vague memories of watching the boys play
17 baseball.

18 **Q.** Besides at the ball field and then when the
19 Zonolite was brought home by your siblings, do you
20 have any other memory of seeing Zonolite anywhere
21 else?

22 **A.** I saw some up at the W.R. Grace site.

23 **Q.** Okay. Anywhere else?

24 **A.** Not that I have a memory of.

25 **Q.** When you say "Up at the W.R. Grace site,"

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1 what location are you referring to?

2 **A.** The site on the river.

3 **Q.** And when would you have been at the site on
4 the river?

5 **A.** Probably in the late '80s.

6 **Q.** And what do you recall when you were there?

7 **A.** I don't recall -- it was after Grace had
8 shut down. That's all I --

9 **Q.** Okay.

10 **A.** Yeah.

11 **Q.** Okay.

12 **A.** So I don't know when they shut down and so
13 don't remember -- I don't remember. I just remember
14 being there.

15 **Q.** Why were you there?

16 **A.** I don't know.

17 **Q.** Okay. Was it a one-time thing?

18 **A.** It was a one-time thing, and it was only --
19 it wasn't big piles of it. It was, like, a little
20 side pile or something or -- I don't remember. I just
21 remember being at the site.

22 **Q.** Now, you said at a Grace site. Was it a
23 site that was -- was it the -- was it the site where
24 there would be -- where they were loading it into
25 railcars, or was it a different site than that?

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1 **A.** No. It would have been a different site.

2 **Q.** Do you recall being with -- who you were
3 with, if anybody, at that time?

4 **A.** No. It was something so insignificant and
5 quick that I don't have any memory of who I was with
6 even.

7 **Q.** Understood. All right. How about if I
8 switch over and use the term "Vermiculite"? Would
9 your answers be any different?

10 **A.** No.

11 **Q.** Okay. When I say the word "Zonolite,"
12 that's the same as vermiculite to you?

13 **A.** It's interchangeable.

14 **Q.** Okay. Do you know whether or not Zonolite
15 or vermiculite was ever on any of the properties that
16 you lived at while growing up?

17 **A.** While growing up, no. Not that I know of.

18 **Q.** What about later on in life? Do you know
19 whether or not any of your properties had vermiculite
20 or Zonolite on them?

21 **A.** None of the properties that I lived on did,
22 no.

23 **Q.** What about your sister, Joyce? Do you know
24 whether or not there was ever vermiculite or Zonolite
25 on any of the properties that she lived at?

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1 **A.** The places that we rented and stuff, I have
2 no idea.

3 **Q.** What about on your family property, the
4 acreage that you're on? Do you know whether or not
5 Zonolite, vermiculite has ever been found on the
6 properties that you -- the land that you own?

7 **A.** It was found at 1124 Hemphill Road. It was
8 brought in way after Joyce left home, and Ethel's
9 second husband brought it in for his garden.

10 **Q.** Okay. Do you know when he would have
11 brought it in --

12 **A.** No.

13 **Q.** -- to the property?

14 **A.** I do not.

15 **Q.** Do you know why he brought it into the
16 property? You said for his garden?

17 **A.** I assume for -- I assume for his garden. We
18 never had -- his garden was his spot, and we never had
19 any interaction with him or -- with his garden.

20 **Q.** When you say "His garden," do you know where
21 in relation to the house was his garden?

22 **A.** It was on the east side of the house.

23 **Q.** I'm going to try and show this map up here
24 again of Google Earth.

25 So this was the house that your stepfather

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1 lived in?

2 **A.** Uh-huh. Track right.

3 **Q.** Okay.

4 **A.** Go up. Oops. Not that far right. Track
5 left a little. Right in there.

6 **Q.** Okay. So that's where you recall his garden
7 being?

8 **A.** That's where his garden was, yes.

9 **Q.** And how did you know that there was
10 vermiculite at that location brought in by -- for the
11 garden? How did you come to know that?

12 **A.** Because it was cleaned by the EPA.

13 **Q.** Prior to the EPA cleaning, did you know that
14 it was there?

15 **A.** I don't know. I knew that it got cleaned,
16 and it was something that -- his garden didn't start
17 until quite a few years even after I had graduated and
18 left home.

19 **Q.** So did you know that there was vermiculite
20 there before the EPA came and cleaned it or -- strike
21 that. Let me ask a better question.

22 How did you learn to know that there was
23 vermiculite in the garden at 1124 Hemphill Road?

24 **A.** Because the EPA came in and tested.

25 **Q.** Do you know when the EPA came in and tested?

<p style="text-align: right;">53</p> <p>1 A. No.</p> <p>2 Q. Was your mother still alive at that time?</p> <p>3 A. Yes.</p> <p>4 Q. Do you recall anything that your mother said</p> <p>5 about the testing that the EPA did?</p> <p>6 A. No.</p> <p>7 Q. And do you know how many times the EPA came</p> <p>8 in and did testing?</p> <p>9 A. No.</p> <p>10 Q. What, if any, cleanup -- I call it</p> <p>11 remediation, but cleanup is a fine term as well, but</p> <p>12 what, if any, cleanup did the EPA or somebody do in</p> <p>13 response to the EPA testing?</p> <p>14 A. I don't know. I would have to ask the EPA.</p> <p>15 Q. You don't recall your mother telling you</p> <p>16 anything about what they did? Did they take out soil,</p> <p>17 put in new soil? Do you recall any of that?</p> <p>18 A. No. She -- she signed whatever they gave</p> <p>19 her.</p> <p>20 Q. Do you still have those documents from</p> <p>21 when -- that she signed with respect to the EPA?</p> <p>22 A. I would doubt it. I don't recall seeing</p> <p>23 anything in her documents after she passed away.</p> <p>24 Q. Do you know whether or not there are any</p> <p>25 sort of land restrictions or land documents that are</p>	<p style="text-align: right;">55</p> <p>1 your sister; is that correct?</p> <p>2 A. Which property?</p> <p>3 Q. 1124.</p> <p>4 A. That belongs to me now.</p> <p>5 Q. Oh, okay. All right.</p> <p>6 A. So when I say nothing was found on my</p> <p>7 property, because EPA tested my property at 308 Bennie</p> <p>8 Lane, and as far as I know -- I don't know. I don't</p> <p>9 have any documentation. No. I don't have any</p> <p>10 documentation of where else they tested.</p> <p>11 Q. Do you -- do you know the results of the EPA</p> <p>12 testing of your property at 308 Bennie, Bennie Lane?</p> <p>13 A. There was never any Zonolite there.</p> <p>14 Q. Do you know the results of the tests they've</p> <p>15 done?</p> <p>16 A. No.</p> <p>17 MS. MARIMAN: Objection. Assumes facts not</p> <p>18 in evidence.</p> <p>19 Go ahead and answer.</p> <p>20 THE WITNESS: No.</p> <p>21 BY MR. NICASTRO:</p> <p>22 Q. I'm going to go back to Exhibit 1, which</p> <p>23 were the addresses that we were talking about here</p> <p>24 that were provided in discovery.</p> <p>25 Besides 1124, which we've talked about, do</p>
<p style="text-align: right;">54</p> <p>1 attached to your property because of what the EPA did?</p> <p>2 A. Not that I know of.</p> <p>3 Q. Do you know of any other property that you</p> <p>4 all own at -- the 154 acres, do you know whether or</p> <p>5 not vermiculite was found on any other locations on</p> <p>6 your property?</p> <p>7 A. I -- it wasn't found on my property.</p> <p>8 Q. Okay. That makes me aware that -- it sounds</p> <p>9 like you know that there was some on other people's --</p> <p>10 your neighbor's property?</p> <p>11 MS. MARIMAN: Objection. Form.</p> <p>12 Go ahead and answer, if you can.</p> <p>13 THE WITNESS: Okay. So ask that question</p> <p>14 again.</p> <p>15 BY MR. NICASTRO:</p> <p>16 Q. Sure. I asked you whether or not there was</p> <p>17 any vermiculite that was found on your property, on</p> <p>18 your 154 acres, and you said "Not on my property." So</p> <p>19 I was trying to broaden the question a little bit more</p> <p>20 of, what properties are you aware of that vermiculite</p> <p>21 was found on?</p> <p>22 A. 1124 Hemphill Road.</p> <p>23 Q. Okay. I'm sorry. I use that kind of as</p> <p>24 your property now because I just thought through the</p> <p>25 passing, but that property still actually belongs to</p>	<p style="text-align: right;">56</p> <p>1 you know whether or not the EPA has tested any of</p> <p>2 these other addresses in Libby, Montana?</p> <p>3 A. I do not. I do not.</p> <p>4 Q. Besides 1124 Hemphill Road, do you know</p> <p>5 whether or not you have -- you've personally seen</p> <p>6 Zonolite or vermiculite at any of these addresses?</p> <p>7 A. I have not.</p> <p>8 Q. Do you know the name of the company that was</p> <p>9 mining the Zonolite?</p> <p>10 A. W.R. Grace, as I understand it.</p> <p>11 Q. So growing up in Libby and living there</p> <p>12 through the '70s and '80s, what, if anything, do you</p> <p>13 recall about what W.R. Grace would indicate that</p> <p>14 they're using the product for?</p> <p>15 A. In the '70s and '80s?</p> <p>16 Q. Yeah.</p> <p>17 A. I can only go by what they -- I would have</p> <p>18 heard, which was insulation and people used it for</p> <p>19 gardens and whatnot.</p> <p>20 Q. Do you know whether or not W.R. Grace would</p> <p>21 give their product to the community during the '70s</p> <p>22 and '80s?</p> <p>23 A. I remember my boyfriend at the time telling</p> <p>24 me that they had put down Zonolite on the track,</p> <p>25 the -- I don't know which track it was. I just</p>

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1 remember him telling me, and he said it was just
 2 wonderful to run in. It was -- made running on it
 3 very easy on the feet.
 4 Q. Uh-huh.
 5 A. He just --
 6 Q. Do you recall -- I'm sorry. Go ahead.
 7 A. I'm sorry. I just remember that he loved
 8 running on it.
 9 Q. Do you recall any other stories like that
 10 about how the product that W.R. Grace was using was
 11 being used within the community?
 12 MS. MARIMAN: I'm just going to object to
 13 form.
 14 You can go ahead and answer, if you can.
 15 THE WITNESS: No, I don't.
 16 BY MR. NICASTRO:
 17 Q. Was Zonolite a product that just sort of
 18 generally -- you being a member of the Libby community
 19 is why I ask you this question, but was it something
 20 that Libby was proud of?
 21 MS. MARIMAN: Objection. Form and vague.
 22 Time frame.
 23 Go ahead and answer.
 24 THE WITNESS: Say that question again.
 25 /////

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1 BY MR. NICASTRO:
 2 Q. Sure. I mean, was it something that the
 3 Libby community was -- something that they were proud
 4 of in the '70s and '80s, Zonolite?
 5 MS. MARIMAN: And, again, objection.
 6 THE WITNESS: I can't --
 7 MS. MARIMAN: Form.
 8 Go ahead.
 9 THE WITNESS: I have no answer to that. I
 10 just -- I don't know what you mean by "Proud of."
 11 People were glad to have a job, and W.R. Grace paid
 12 well.
 13 BY MR. NICASTRO:
 14 Q. And how big of a company was it, just sort
 15 of through your general sense growing up? I mean, how
 16 many people do you think they employed during the '70s
 17 and '80s?
 18 A. I have no idea.
 19 Q. Were they any bigger than the logging
 20 community in Libby?
 21 A. When you say "The logging community," I
 22 would have to say the community -- logging community
 23 was bigger, but that was the whole of Lincoln County
 24 was the logging community, and we're talking gypo
 25 loggers and the company loggers. So the logging was a

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1 huge community compared to a Zonolite mine.
 2 Q. Do you know? Had you ever heard of
 3 W.R. Grace giving the product out to the community for
 4 free?
 5 MS. MARIMAN: Objection. Asked and answer.
 6 But you can answer it again if you'd like
 7 to.
 8 THE WITNESS: I don't know.
 9 BY MR. NICASTRO:
 10 Q. Did you ever have any family members who
 11 worked for W.R. Grace?
 12 A. No.
 13 Q. Did you have any friends that worked for
 14 W.R. Grace?
 15 A. Yes. Distant friends.
 16 Q. Did you and your sister, Joyce, attend the
 17 same schools?
 18 A. No.
 19 Q. Tell me. Which schools did your sister
 20 attend while growing up, if you know?
 21 A. We attended some of the same schools, some
 22 of the different schools. We both attended Plummer.
 23 She was in junior high at Asa Wood. I was in junior
 24 high at the new junior high school, and then we both
 25 attended the same high school. While she was in

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1 junior high, I would have been in Lincoln Elementary
 2 for the one year that we lived on Second Street
 3 Extension for the year, year and a half or however
 4 long it was. I was in school for one school year at
 5 Lincoln Elementary.
 6 Q. Okay. And the high school that you all
 7 attended was Lincoln High School? Or Libby -- excuse
 8 me. Libby High School?
 9 A. Libby High School.
 10 Q. And I think I heard you correctly. That may
 11 or may not be the location that your boyfriend had
 12 mentioned about the track and Zonolite?
 13 MS. MARIMAN: And I object as to time frame.
 14 But go ahead and answer, if you can.
 15 THE WITNESS: I don't know which -- whether
 16 it was the junior high or the high school. I do not
 17 know. The current high school.
 18 BY MR. NICASTRO:
 19 Q. Did Joyce attend the junior high school that
 20 your boyfriend would have been referring to?
 21 A. No.
 22 Q. Okay. Any of the homes that you had lived
 23 in with your sister, Joyce, how -- in the wintertimes
 24 how did you all heat them, your homes?
 25 A. On Hemphill Road it was wood heat. The rest

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1 were electric.

2 Q. Do you happen to know where the wood came
3 from that you all used to heat your homes?

4 A. No.

5 Q. Do you know whether or not any of the
6 schools that your sister attended when she lived in
7 Libby were ever cleaned up because of asbestos,
8 vermiculite -- or vermiculite?

9 A. No, I don't know.

10 Q. Okay. I want to -- okay. As the personal
11 rep for the estate, are you -- have you filed any
12 claims with any asbestos trusts seeking
13 compensation --

14 A. Have I --

15 Q. -- for asbestos -- yes. On behalf of your
16 sister.

17 A. No. Not that I know of.

18 Q. What about through the W.R. Grace trust?
19 Have you filed a claim through the W.R. Grace trust?

20 A. I haven't.

21 Q. How about through attorneys that represent
22 you as the PR for the estate? Do you know whether or
23 not they have filed claims through the W.R. Grace
24 trust?

25 A. I don't know.

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1 Q. How about a Robinson Insulation trust?

2 A. I don't know.

3 Q. I'm going to mark -- I think I'm at
4 Exhibit 3 at this point. I'm going to mark this as
5 Exhibit 3.

6 (Exhibit 3 was marked.)

7 BY MR. NICASTRO:

8 Q. It's called "Insured Claims Qualified
9 Settlement Fund Trust Claim Form." It has your name
10 here, "Judith Hemphill," and then your sister's name
11 here, and it is a document that's been produced in
12 this case, and it's signed here by an attorney in
13 2011.

14 Let me ask you. Have you ever seen this
15 document before?

16 A. I don't remember.

17 Q. Let me -- did this change? Did the screen
18 change, ma'am?

19 A. Yeah.

20 Q. Okay. This is another document that was
21 produced in relation to the W.R. Grace submission with
22 your sister's name on it that says "Exposure History."
23 Have you ever seen this document before?

24 A. I don't remember.

25 Q. Okay. I'm going to run through this

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1 document because in it it makes claims of community
2 exposure to asbestos, so I want to run through some of
3 these statements here. Okay, ma'am?

4 Fishing and floating the Kootenai River near
5 the mouth of Rainy Creek, do you know whether or not
6 that was something that your sister did?

7 A. Yes, she did.

8 Q. Played in or attending baseball games and
9 Logger Days at the municipal ball fields, is that
10 something that your sister did?

11 A. Yes.

12 Q. It says "Used the high school and/or middle
13 school track." It says "Beyond school gym classes."
14 Is that something that your sister did?

15 A. I don't know. I don't know what she did in
16 high school or middle school.

17 Q. Okay. "Spent time in and around piles of
18 vermiculite," is that something -- do you know whether
19 or not that's something your sister did?

20 A. Yes. That's --

21 Q. "Popped" --

22 MS. MARIMAN: Go ahead and continue
23 answering.

24 THE WITNESS: I was going to say, and
25 that's -- she and I had talked about that, and that's

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1 when she told me that she would take me over to play
2 in it.

3 BY MR. NICASTRO:

4 Q. And it says "Popped vermiculite." Is that
5 something that your sister did?

6 A. Yes.

7 Q. Then it says "Spent time on or around
8 railroad tracks." Is that something your sister did?

9 A. Yes.

10 Q. Did you do that with your sister?

11 A. Spending time on or around the railroad
12 tracks?

13 Q. Yes.

14 A. I remember walking on the railroad tracks
15 and trying to walk the tracks and trying to walk the
16 railroad ties.

17 Q. When you say "Walk the railroad ties," what
18 are you referring to?

19 A. Have you ever tried to walk a railroad tie?
20 They don't make it into any kind of stride you can
21 walk on.

22 Q. I see. Is that something -- do you have
23 memories of doing that with your sister?

24 A. Yes.

25 Q. How -- specifically, where do you have

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1 memories of walking on the railroad tracks?

2 **A.** I don't remember. I just remember walking
3 on the tracks and balancing on the tracks.

4 **Q.** And do you happen to recall specifically,
5 you know, what it was that you were doing at the time
6 or where you were going that would have put you in
7 relation to the railroad tracks?

8 **A.** No.

9 **Q.** Do you know how often you did that? I mean,
10 was it something that you did every day? Was it
11 something that you would do mostly in the summer?

12 **A.** I don't remember. I remember it being hot,
13 and, you know, most of the time it's summer because
14 you're out messing around on the railroad track and
15 putting pennies down and stuff.

16 **Q.** It said burning firewood -- strike that.

17 But, specifically, like, if I were to show
18 you a map and ask you about locations, do you have any
19 memories of where you and your sister were on railroad
20 tracks?

21 **A.** No.

22 **Q.** Okay. It says, Burning firewood from Rainy
23 Creek areas. Is that something that either your
24 sister did or she would have been in a home that was
25 being heated with this type of firewood?

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1 **A.** I do not know.

2 **Q.** And then it says "Areas in her home and
3 gardened with vermiculite." Is that something that
4 your sister did?

5 **A.** No.

6 **Q.** Later on it talks about doing laundry for
7 father, brother and sister when they worked at the
8 lumber mill. Is that something that your sister did?

9 **A.** She didn't do the laundry for her sister
10 because I wasn't old enough to work at the lumber
11 mill. That's not an entirely accurate statement.

12 **Q.** Okay. How would we make this statement more
13 accurate, or what is accurate about the statement?

14 **A.** Well, I'm not really sure what's accurate
15 about it. I know she did laundry. I don't -- don't
16 know if the brothers were working then. When she did
17 laundry, I don't think they were old enough to work at
18 the lumber mill, and I certainly wasn't, and he didn't
19 work at the lumber mill. He worked as a logger.

20 **Q.** And when you say "He worked as a logger,"
21 who are you referring to?

22 **A.** My father.

23 **Q.** Did he work as a logger most -- for the
24 entire time that you were -- when you and your sister
25 were growing up?

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1 **A.** Yes. He worked as a logger in the woods,
2 and realize that I was nine years old when he died.

3 **Q.** Yeah.

4 **A.** And so my brothers weren't working in the
5 mill at that point.

6 **Q.** And I knew you weren't alive at the time,
7 but do you believe, based on what you were told, that
8 your father worked for -- worked as a logger during,
9 you know -- as long as Judith -- excuse me. As long
10 as Joyce -- between the time Joyce was born and you
11 were born?

12 **A.** I would say so, yes.

13 **Q.** So what did he do as a logger? You said
14 he'd go out -- he was actually out in the --

15 **A.** He was out in the woods cutting down small
16 timber.

17 **Q.** Okay. Do you know whether or not he ever
18 worked in the mill?

19 **A.** I don't.

20 **Q.** And it says "Brother," so I'm assuming it
21 just means one brother, or did you have one brother or
22 two brothers that worked for the lumber mill, lumber
23 companies?

24 **A.** I'm not really sure on the brother part
25 either, because it says to 1970s, and he would have

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1 graduated in '70. So there would have been one
2 brother that would have spent time in the lumber mill.

3 **Q.** Do you have any memory of that?

4 **A.** Of him working in the lumber mill?

5 **Q.** Yes.

6 **A.** I remember he worked in the lumber mill.

7 **Q.** And which brother is that?

8 **A.** That would have been Clark.

9 **Q.** Clark. Okay.

10 **A.** And that would have been after 1970.

11 **Q.** Do you have any memory of your sister doing
12 your father's laundry or helping with the family
13 laundry?

14 **A.** I do.

15 **Q.** Did you also help with the family laundry,
16 or were you too young at that time?

17 **A.** No. I did help.

18 **Q.** Okay. Do you know whether or not your
19 sister has ever sued a lumber company claiming that
20 her asbestos-related disease was the result of
21 anything that they did?

22 **A.** Say that again.

23 **Q.** Sure. Do you know whether or not your
24 sister, while she was alive, ever sued a lumber
25 company saying that the asbestos-related disease was

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1 related to anything that she did -- that they did?

2 **A.** Not --

3 MS. MARIMAN: I'll just object as to vague
4 as to the term "The asbestos-related disease."

5 Go ahead and answer, if you can.

6 THE WITNESS: Not that I know of.

7 BY MR. NICASTRO:

8 Q. Have you, as her personal rep, ever made a
9 claim against a lumber company with respect to your
10 sister's asbestos-related disease?

11 **A.** No.

12 Q. When I asked the question about your sister,
13 I used the term "Filed a lawsuit." I want to make it
14 kind of broader. Do you know whether or not she ever
15 made a claim against a lumber company for something
16 that they -- claiming that they did something that
17 caused an asbestos-related disease for her?

18 **A.** Not that I know of.

19 Q. Do you know whether or not your sister,
20 while she was alive, ever received any sort of
21 settlement with any lumber companies relating to
22 asbestos-related diseases?

23 **A.** Not that I know of.

24 Q. How about you as a personal representative?
25 Have you come to any sort of settlement with any

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1 lumber-related -- lumber companies with respect to
2 asbestos-related diseases for your sister?

3 **A.** No.

4 Q. Who, if any, have you, as a personal
5 representative for your sister's estate, reached any
6 sort of agreements, settlement agreements with for
7 your sister and asbestos-related diseases?

8 **A.** Who have I?

9 Q. Yes.

10 **A.** Asbestos-related disease settlement? No. I
11 don't -- no.

12 Q. You're --

13 **A.** I'm just trying to -- I'm thinking of all
14 the documents that have been sent to me, and I don't
15 understand half of them, so I -- I don't know, I guess
16 what, I've read, but I don't remember anything.

17 Q. Do you know when your sister first made any
18 sort of claim or lawsuit related to asbestos-related
19 disease?

20 **A.** No. She was alive. She took care of stuff.

21 Q. Okay. Do you happen to recall when your
22 sister may have first said anything to you about an
23 asbestos-related disease?

24 **A.** No, I don't know when. I know she got
25 tested by the CARD Clinic.

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1 Q. And how did you know that?

2 **A.** She told me, but I don't know when.

3 Q. While your sister was alive, did she ever
4 make any statements as to who she blamed for asbestos-
5 related disease?

6 **A.** Not to me.

7 THE WITNESS: Can we take a break?

8 MS. MARIMAN: Yeah.

9 MR. NICASTRO: Absolutely. We're fine. We
10 have just a couple more documents, but this will be
11 fine.

12 THE VIDEOGRAPHER: Okay. We're off the
13 record. The time is 11:36 a.m.

14 (Break held from 11:36 a.m. to 11:52 a.m.)

15 THE VIDEOGRAPHER: Okay. We're on the
16 record. The time is 11:52 a.m.

17 BY MR. NICASTRO:

18 Q. Okay. Let me go -- let's see here. I'll
19 share the screen here.

20 Okay. When we took a break, I was asking
21 you questions about settlements or claims against some
22 other companies and entities, and here in this
23 discovery document, going back to Exhibit 1, we had
24 asked a question about whether or not your sister,
25 Ms. Walder, or anybody acting on her behalf, which

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1 would include you or your attorneys, had given
2 any statements or filed any lawsuits claiming monetary
3 compensation for medical conditions or disease, which
4 in this case would be asbestos-related disease.

5 And in the response back, the first thing
6 that was mentioned was a claim filed by the W.R. Grace
7 Asbestos PI trust, so that's where we -- I first
8 started showing you some of those documents.

9 Are you familiar at all with this trust
10 claim?

11 **A.** No.

12 Q. Okay. Do you know -- have you personally,
13 as the PR for your sister's estate, done anything
14 recently to try to resolve this claim with the trust?

15 **A.** No.

16 Q. All right. The next one is a lawsuit that
17 was filed, and it's called Brossman versus BNSF,
18 et al., and it says it was a Montana State tort claim,
19 and it says "Remains pending." Are you familiar at
20 all with this lawsuit?

21 **A.** No.

22 Q. Do you know whether or not your sister
23 received any sort of settlement proceeds from the
24 State of Montana while she was alive?

25 **A.** I do not. I do not know.

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1 Q. Okay. How about since you've become the PR
2 of her estate? Do you know whether or not you are
3 advancing any claims against the State of Montana on
4 her behalf as the PR?

5 **A.** No, I don't know.

6 Q. Then it mentions here a settlement and
7 dismissal with Robinson Insulation, and some documents
8 were provided. Are you familiar with that?

9 **A.** No.

10 Q. Let me show you what I'll mark as --

11 MR. NICASTRO: Am I up to Exhibit 4 now?

12 THE REPORTER: Yes.

13 (Exhibit 4 was marked.)

14 (Exhibit 5 was marked.)

15 BY MR. NICASTRO:

16 Q. Exhibits 4 and 5 are two documents, and I'll
17 do four first. This was a document that was provided
18 to us, and it's a wrongful death release settlement
19 agreement, and it's got your name here as the trustee
20 for your sister, and it mentions Robinson Insulation,
21 and at the end of the document, is that your
22 signature?

23 **A.** It is.

24 Q. Okay. So now seeing this document here,
25 Exhibit 4, does that refresh your memory as to signing

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1 any sort of settlements with any entities relating to
2 your sister's asbestos-related disease?

3 **A.** It doesn't because I don't understand any of
4 it.

5 Q. Okay. But you did sign something settling a
6 claim that was being brought on behalf of your sister
7 against Robinson Insulation?

8 **A.** I signed that paper.

9 MS. MARIMAN: Objection. Form.

10 Go ahead and answer.

11 THE WITNESS: I signed that paper.

12 BY MR. NICASTRO:

13 Q. Okay. Do you know what, if any, claims
14 you're making as the PR against Robinson Insulation
15 or -- strike that.

16 Any of these entities listed here, as to why
17 they would be responsible for your sister's asbestos-
18 related disease?

19 **A.** I don't know.

20 Q. Okay. And Exhibit 5, this is another
21 release here, and it's called a general release.
22 Again, it has your name up at the top; is that
23 correct?

24 **A.** That is correct.

25 Q. Then you see the entities listed here, and

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1 did you sign this document as well on behalf of Joyce
2 Walder as her personal rep?

3 **A.** I did.

4 Q. And do you know what, if any, claims you
5 were making against these entities that would relate
6 to your sister and asbestos-related disease?

7 **A.** I don't know.

8 (Exhibit 6 was marked.)

9 BY MR. NICASTRO:

10 Q. Exhibit 6 is another release that we

11 received, and is this your -- let me start at the top.

12 This is a general release, State of Montana,
13 Joyce Walder, and here it has her signature here. Do
14 you recognize it as her signature?

15 **A.** It is.

16 Q. Have you ever seen this document before?

17 **A.** No.

18 Q. Okay. Finally, this is a legal document
19 here that's called a notice of order approving
20 settlement with the State of Montana, and this is the
21 Brossman lawsuit, which is the same lawsuit that you
22 referenced in your interrogatory responses here, and
23 so have you ever seen this order from the court
24 relating to this lawsuit that you have referenced in
25 your discovery responses?

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1 **A.** I don't know.

2 Q. You were living in Libby, and your sister
3 was living in California at the time of her passing?

4 **A.** Correct.

5 Q. Were you ever involved in any of her
6 treatment, let's say, sort of the last -- I don't
7 know -- maybe six months of her life?

8 **A.** How do you mean involved?

9 Q. I mean, were you out there caring for her in
10 any way, interacting with any of her doctors, anything
11 of that?

12 **A.** I interacted with some of her doctors, went
13 to see her after her surgery intending to spend two
14 weeks with her and got to see her for a day and a half
15 and talked to the doctors. At that point she -- when
16 I left for home, she ended up back in the hospital. I
17 turned around. That was on a Friday. Saturday.
18 Friday. Turned around, came back Sunday and talked to
19 the -- some of the -- well, one of the doctors, and
20 she died shortly after that.

21 Q. Okay. So you were there when she passed?

22 **A.** I was.

23 Q. You said you were only there at first before
24 you started going home for a day and a half but you
25 were planning on staying longer? Did I hear that

1 correctly?

2 **A.** Let me clarify.

3 **Q.** Okay.

4 **A.** I went down there for two weeks. She was
5 supposed to be out of the hospital by the time I got
6 there after her surgery. We were going to spend two
7 weeks together. They kept her in the hospital. I got
8 to see her for a day and a half before my scheduled
9 flight back.

10 **Q.** Got you. I understand. All right.

11 How about your brother, Clark? I know he
12 was mentioned in this, but was he involved at all in
13 sort of similar -- around the care and treatment of
14 your sister for the last six months of her life, if
15 you know?

16 **A.** I don't know.

17 **Q.** Okay. I'm just kind of looking at my notes
18 here, and I think we're almost done, at least the
19 questions I was going to ask you.

20 Oh, do you -- I know there's a four-year gap
21 between you and your sister when it came to high
22 school, but do you know? Was she involved in any
23 sports when she was in high school?

24 **A.** I don't know about the after-school sports.
25 Back then after-school sports were just done after

1 school. They weren't the big thing where all the
2 parents and stuff go to now.

3 She was a twirler and -- you know, for the
4 football games and whatnot, and I remember that she
5 played powder-puff football a few times and -- but
6 sports-wise, I don't know that she was involved or
7 not.

8 **Q.** Okay. Now, that track -- the track at the
9 high school, is that a track that went around the
10 football field, my sort of traditional view of a track
11 and a football field, or was it something completely
12 different?

13 **A.** The track that she would have been using
14 would have been -- as far as -- I don't know what
15 track it was.

16 **Q.** Okay.

17 **A.** Because I don't know where the tracks were.
18 I don't remember when the high school was built. I
19 know that when she was involved in the twirling, the
20 powder-puff football, the bonfires, the -- even Logger
21 Days, it was down at the ball fields.

22 **Q.** What about the high school football games?
23 Say in '71, '72, her senior, junior year, were those
24 done at the high school? Were they held somewhere
25 else?

1 **A.** I don't know.

2 **Q.** What about when you were at the high school?

3 **A.** When I was at the high school, they were at
4 the high school.

5 **Q.** Okay. And at that high school, was there --
6 when you were there, was there one track, or were
7 there more than one track? Was there more than one
8 track?

9 **A.** There was one track.

10 **Q.** And did that track go around the football
11 field, or was it separate from the football field?

12 **A.** I don't know. I didn't go to a lot of
13 football games.

14 **Q.** That's fine. Now, I know I asked you some
15 questions about seeing vermiculite, and then you were
16 asked some questions about being on railroad tracks
17 with your sister. Do you ever recall seeing
18 vermiculite or Zonolite by any railroad tracks?

19 **A.** I would not have noticed. As a kid, I
20 wouldn't have thought, Oh, there's some Zonolite.

21 **Q.** Okay.

22 **A.** We were more concerned with, you know,
23 walking the rails.

24 **Q.** Walking the rails. Okay.

25 Ms. Hemphill, those are all the questions I

1 have. I appreciate your time.

2

3

EXAMINATION

4 BY MS. MARIMAN:

5 **Q.** Judith, I have just a few questions to
6 clarify a few issues that Mr. Nicastro asked you
7 about.

8 First I'd like to talk about the property
9 that's located further up Hemphill Road that's owned
10 by the Nobles. What's your understanding of when the
11 Nobles came to acquire that property? What time frame
12 do you think that was?

13 **A.** I would have to -- I can't tell you the
14 exact year, but I'm going to say within the last ten
15 years.

16 **Q.** Okay.

17 **A.** Give or take.

18 **Q.** What's your understanding of what that
19 property is at present?

20 **A.** It's a gravel pit.

21 **Q.** Okay.

22 **A.** A rock pit, gravel pit.

23 **Q.** Now, do Noble trucks use Hemphill Road to
24 access that gravel pit?

25 **A.** They do not.

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1 Q. Where do they access that gravel pit from?

2 A. They come off of Highway 2.

3 Q. And why do they come off -- describe the
4 road from Highway 2 up to the gravel pit.

5 A. It's probably about a half mile long, and
6 they've paved it.

7 Q. Okay. Now I'd like to circle back on the
8 recollection you had of your siblings bringing home
9 some pieces of vermiculite and lighting them on fire.

10 To your recollection, approximately how many
11 pieces did they bring home with them?

12 A. It wasn't very many. Like I said, I just
13 remember them lighting them on fire. They didn't --
14 they didn't bring gobs home. They just probably stuck
15 them in their pockets and brought them home so we
16 could play with them.

17 Q. Got you. Let's talk about the garden at
18 1124 Hemphill.

19 Now, as I understand and you've testified,
20 this garden was put in long after both Joyce and you
21 graduated from high school; is that correct?

22 A. That's correct.

23 Q. And it was put in by your mother's second
24 husband, Gordon; is that correct?

25 A. Gordon, yes.

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1 Q. Okay. To your knowledge did Joyce ever go
2 in the garden?

3 A. No. No.

4 Q. Why not?

5 A. It was Gordon's garden. It was a berry
6 patch, and he was -- he liked his berries, and we
7 didn't -- it was his garden, and so we didn't go in
8 his garden. It was his own spot.

9 Q. Was it understood that you're not to go in
10 Gordon's garden?

11 A. Pretty much, yeah.

12 Q. Okay. Firewood. Mr. Nicastro asked you at
13 length about the property owned by your family, the
14 approximately 150 acres up on the hill that, from the
15 aerial photos, appear to be heavily wooded.

16 I'm curious. The firewood that you used up
17 on Hemphill Road at the top of that hill, do you have
18 any understanding or belief as to where that firewood
19 that would have come from that you would have used to
20 heat your home?

21 A. Logically, it would have come from our own
22 property because it doesn't make sense to haul it
23 great distances when you have it right there.

24 Q. Great. Now, do you recall seeing your
25 sister as a twirler at football games?

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1 A. I don't.

2 Q. Okay.

3 A. I just -- I remember she was in the Logger
4 Day parade and whatnot during that time.

5 Q. Okay. And was that something that she did
6 throughout high school?

7 A. I don't know how long she was a twirler.

8 Q. Okay. All right. And do you have a
9 recollection of how long -- or if the football games
10 were played down at that Legion field next to that
11 Libby rail yard, do you know whether the football
12 games were played at the Legion field next to the
13 Libby rail yard during the time your sister was in
14 high school?

15 A. Yes, they were. I remember they had the
16 bonfires -- I think she took me to one, or at least
17 one. They had the bonfire for the homecoming, and
18 then they had the homecoming game, and they had the
19 powder-puff games there.

20 And I don't remember when the high school
21 was built, but I think it was -- they kind of had to
22 carve the football field and track and everything out
23 of the woods, and so that took quite a few years
24 and -- before they had the funding and stuff to do it,
25 but I couldn't give you any times.

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1 Q. So to the best of your knowledge, while your
2 sister was in high school, though, the football games
3 were played at the Legion field adjacent to the Libby
4 rail yard?

5 MR. NICASTRO: Form. Foundation.

6 BY MS. MARIMAN:

7 Q. I can ask that -- to the best of your
8 knowledge --

9 A. Yes, to the best of my knowledge.

10 Q. And I'll just make it so we have a clean
11 sentence.

12 So to the best of your knowledge, during the
13 time your sister was in high school, the football
14 games were played at the Legion baseball field
15 adjacent to the downtown Libby rail yard; is that
16 correct?

17 A. Yes.

18 MR. NICASTRO: Foundation.

19 THE WITNESS: To the best of my knowledge.

20 BY MS. MARIMAN:

21 Q. Okay. Great.

22 MS. MARIMAN: I'm going to go ahead and take
23 a quick break here, Anthony, and then we'll come on,
24 but I think that's all the questions I have. So just
25 one second.

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1 MR. NICASTRO: Okay.
 2 THE VIDEOGRAPHER: Do you want to go off the
 3 record?
 4 MS. MARIMAN: Yeah, we'll go off the record.
 5 THE VIDEOGRAPHER: Okay. Off the record.
 6 The time 12:10 p.m.
 7 (Break held from 12:10 p.m. to 12:14 p.m.)
 8 THE VIDEOGRAPHER: We're on the record.
 9 It's 12:14 p.m.
 10 BY MS. MARIMAN:
 11 Q. Judith, I don't have any further questions
 12 for you. Thanks for your time today.
 13
 14 EXAMINATION
 15 BY MR. NICASTRO:
 16 Q. Real brief.
 17 Do you know -- I want to kind of make sure
 18 I'm clear on schooling locations that your sister went
 19 to.
 20 You mentioned Plummer. Did you go there, or
 21 did your sister go there, or did both of you go there?
 22 A. We both went to Plummer Elementary School.
 23 Q. And how about McGrade?
 24 A. No.
 25 Q. And Asa Wood Elementary School?

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1 A. She went to Asa Wood Junior High.
 2 Q. Okay. And then the Libby High School and
 3 Middle School, did she go to both of those locations?
 4 A. She did not go to the Libby Middle School
 5 because she went to the Asa Wood Junior High.
 6 Q. How about Fireman's Park? Did she ever go
 7 to Fireman's Park?
 8 MS. MARIMAN: Objection. Beyond the scope
 9 of cross.
 10 But go ahead and answer if you can.
 11 THE WITNESS: I don't have any memories of
 12 her there. I can't answer that.
 13 BY MR. NICASTRO:
 14 Q. And how about -- that's fine. Go ahead.
 15 Okay. Those are all my questions. Thank
 16 you, ma'am.
 17 MS. MARIMAN: All right. Great. Thanks.
 18 We'll see you guys back here around one o'clock.
 19 MR. NICASTRO: Yeah. Thank you.
 20 THE VIDEOGRAPHER: Okay. We're off the
 21 record. It's 12:15 p.m.
 22 (Whereupon, the Remote Video-Recorded
 23 Deposition of JUDITH HEMPHILL was concluded at
 24 12:15 p.m. and signature was reserved.)
 25

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1 REPORTER'S CERTIFICATE
 2 State of Montana)
 3 County of Flathead)
 4 I, Jolene Asa, Registered Professional Reporter
 5 and Notary Public for the State of Montana, residing
 6 in Kalispell, Montana, do hereby certify:
 7 THAT I did report the foregoing matter at the
 8 time and place stated in the above-entitled matter
 9 after having duly sworn JUDITH HEMPHILL; and
 10 THAT the foregoing pages constitute a true and
 11 accurate transcription of the testimony of JUDITH
 12 HEMPHILL that was taken in shorthand by me and reduced
 13 to writing under my direction to the best of my
 14 ability; and
 15 THAT I am not an attorney nor counsel of any of
 16 the parties, nor a relative or employee of any
 17 attorney or counsel connected with the action, nor
 18 financially interested in the action.
 19 IN WITNESS WHEREOF, I have hereunto subscribed my
 20 name and affixed my seal on this 12th day of July,
 21 2022.
 22
 23
 24
 25 JOLENE ASA, RPR

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1 CORRECTION PAGE
 2 PAGE LINE CORRECTION
 3
 4
 5
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 8
 9
 10
 11
 12
 13
 14
 15 I have read the foregoing testimony and
 16 believe the same to be true, except for the
 17 corrections noted above.
 18 DATED this ____ day of _____,
 19 _____.
 20
 21
 22
 23 JUDITH HEMPHILL
 24 JACKSON WELLS VS. BNSF RAILWAY COMPANY
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